

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

Jose GUTIERREZ-Salazar

Defendant

) Magistrate Case No. 08 MJ 1497

) MAY 14 AM 9:41

) COMPLAINT FOR VIOLATION OF:

) Title 8, U.S.C., Section 1326
) Deported Alien Found in the
) United States

) Title 18 U.S.C. Section 111 and
) 1114 Assault on a Federal Officer
) (Felony)

The undersigned complainant, being duly sworn, states:


Count 1

On or about **May 13, 2008**, within the Southern District of California, defendant **Jose GUTIERREZ-Salazar**, an alien, who previously had been excluded, deported and removed from the United States to **Mexico**, was found in the United States, without the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security (Title 6, United States Code, Sections 202(3) and (4), and 557), having expressly consented to the defendant's reapplication for admission into the United States; in violation of Title 8, United States Code, Section 1326.

Count 2

That on or about **May 13, 2008**, within the Southern District of California, defendant **Jose GUTIERREZ-Salazar** did forcibly assault, resist, oppose, impede or interfere with **Senior Patrol Agent Juan Sanchez** while he was engaged in or on account of the performance of his official duties; a felony, in violation of Title 18, United States Code, Sections 111 and 1114.

And the complainant further states that this complaint is based on the attached statement of facts, which is incorporated herein by reference.


SIGNATURE OF COMPLAINANT
James Trombley
Senior Patrol Agent

SWORN TO BEFORE ME AND SUBSCRIBED IN MY PRESENCE, THIS 14th DAY OF MAY 2008.


Cathy A. Bencivengo
UNITED STATES MAGISTRATE JUDGE



PROBABLE CAUSE STATEMENT

On May 13, 2008 , at approximately 12:30 a.m. Border Patrol Agent Juan Sanchez was performing linewatch duties in the Chula Vista Border Patrol Station area of operations. Agent Sanchez responded to a seismic intrusion device in an area known as the 76 Firebreak. This area is approximately four miles east of the Otay Mesa, California Port of Entry and three miles north of the United States/ Mexico international border. At approximately 12:35 a.m., Senior Patrol Agent K. Ruffner arrived to assist Agent Sanchez.

At approximately 12:55 a.m., Agent Sanchez encountered two subjects hiding near a rock pile and some high brush. Agent Sanchez identified himself as Border Patrol Agent and questioned both subjects as to their citizenship and nationality. Both subjects responded Mexico. Agent Sanchez asked both subjects if they possessed any immigration document that would allow them to enter or remain in the United States legally including one later identified as the defendant **Jose GUTIERREZ-Salazar**. Both subjects responded No.

Agent Sanchez placed both subjects under arrest but did not use handcuffs because the steep terrain made it difficult to maneuver. Agent Sanchez attempted to escort both subjects up a very steep hill. The defendant became actively resistant and belligerent. The defendant refused to walk up the hill or comply with either Agent Sanchez's or Agent Ruffner's commands. The defendant began to yell "No" and to "Kill him." Both Agent Ruffner and Sanchez attempted to secure the defendant with handcuffs but he continued to resist both physically and verbally. The defendant's actions forced both him and Agent Sanchez to fall into a hillside rock pile and high brush. The defendant then became physically combative and pushed Agent Sanchez down into a rock pile. The subsequent fall caused by the defendant's actions caused injury to Agent Sanchez's left knee. The defendant broke away and attempted to run away from Agent Sanchez. The defendant fell numerous times allowing Agent Sanchez to catch up to the defendant. The defendant positioned himself in a fighting stance while holding a branch in his left hand and screamed the words "Fight Me!," at Agent Sanchez. Agent Sanchez deployed his bureau issued collapsible baton and struck the defendant twice in the inner thigh. After striking the defendant he complied with Agent Sanchez's commands and stopped.

Approximately 10 minutes later, Agent Ruffner arrived and assisted Agent Sanchez in detaining the defendant. Acting Field Operations Supervisor J. Filipi and Field Operations Supervisor E. Swanson arrived at Agent Ruffner's and Agent Sanchez's location to assist in escorting the defendant. The defendant then reached down and picked up a rock. At this time all Agents commanded the defendant to put the rock down. The defendant complied with the Agents' commands. The defendant was then transported to the Chula Vista Border-patrol Station for processing

Routine record checks of the defendant revealed a criminal and immigration history. The defendant's record was determined by a comparison of his criminal record and the defendant's current fingerprint card. Official immigration records of the Department of Homeland Security revealed the defendant was previously deported to **Mexico on April 19, 2007 through San Ysidro, California**. These same records show that the defendant has not applied for permission from the Attorney General of the United States or his designated successor, the Secretary of the Department of Homeland Security, to return to the United States after being removed.